In the

Supreme Court of the United States

October Term, 1957

No. [redacted] 127

ALBERTIS S. HARRISON, JR.,
ATTORNEY GENERAL OF VIRGINIA, ET AL,
Appellants

v.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A CORPORATION; AND NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INCORPORATED, A CORPORATION,
Appellees

STATEMENT OF JURISDICTION

TUCKER, MAYS, MOORE & REED
1407 State-Planters Bank Bldg.
Richmond 19, Virginia
Of Counsel

DAVID J. MAYS
HENRY T. WICKHAM
1407 State-Planters Bank Bldg.
Richmond 19, Virginia

J. SEGAR GRAVATT
Blackstone, Virginia
Counsel for the Appellants

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Other Authorities

In the

Supreme Court of the United States

October Term, 1957

No. .....

ALBERTIS S. HARRISON, JR.,
ATTORNEY GENERAL OF VIRGINIA, ET AL,
Appellants

v.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A CORPORATION; AND NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INCORPORATED, A CORPORATION,
Appellees

STATEMENT OF JURISDICTION

I.

OPINION OF THE COURT BELOW

The opinion of the three-judge United States District Court for the Eastern District of Virginia, Richmond Division, is reported at 159 F. Supp. 503 (1958) as *National Ass'n. for Advancement of Colored People* v. *Patty* and is found, together with the dissenting opinion, as Appendix I to this statement.

II.

THE JURISDICTION OF THE COURT

1. The cases below were brought by the appellees to secure a declaratory judgment and an injunction restraining

the appellants from enforcing five state statutes. A three-judge court was convened pursuant to 28 U. S. C. Sections 2281 and 2284 and jurisdiction was invoked under 28 U. S. C. Sections 1331, 1332 and 1343(3). This appeal is taken from the judgment of the three-judge court declaring three state statutes to be unconstitutional and enjoining their enforcement against the appellees. The statute pursuant to which this appeal is brought is 28 U. S. C. Section 1253.

2. The date and time of entry of the judgment sought to be reviewed by this appeal is April 30, 1958. The notice of appeal was filed in the United States District Court for the Eastern District of Virginia, Richmond Division, on May 22, 1958.

3. Section 1253 of Title 28, U. S. C, confers on this Court jurisdiction of this appeal and reads as follows:

> "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." (June 25, 1948, c. 646, 62 Stat. 926.)

4. The following cases sustain the jurisdiction of this Court:

(a) *St. John* v. *Wisconsin Employment Relations Board*, 340 U. S. 411, 414 (1951); and

(b) *Palmetto Fire Insurance Co.* v. *Conn*, 272 U. S. 295, 305 (1920).

5. The validity of three state statutes is involved. Chapters 31 and 32, pp. 29-33, Acts of the General Assembly of

Virginia, Extra Session, 1956 (respectively codified as Sections 18-349.9 et seq. and 18-349.17 et seq. of the Code of Virginia, 1956 Additional Supplement, pp. 32-36) are registration statutes. Chapter 35, pp. 36-37, Acts of the General Assembly of Virginia, Extra Session, 1956 (codified as Section 18-349.25 et seq. of the Code of Virginia, 1956 Additional Supplement, pp. 36-37) relates to the crime of barratry. Due to the length of these statutes they are not here set out verbatim. Their text is set forth as Appendix II to this statement.

III.

THE QUESTIONS PRESENTED

1. Did the three-judge district court err in refusing to dismiss the complaints pertaining to Chapters 31, 32 and 35, Acts of the General Assembly of Virginia, Extra Session, 1956, on the grounds, or any one of them, set forth in the defendants' motions to dismiss?

2. Did the three-judge district court err in enjoining the enforcement of Chapters 31, 32 and 35, Acts of the General Assembly of Virginia, Extra Session, 1956, against the plaintiffs on the ground that the said statutes deny them rights guaranteed by the Fourteenth Amendment to the Constitution of the United States?

IV.

STATEMENT OF THE CASE

As previously mentioned, these cases were heard before a statutory three-judge court on the complaints of the appellees seeking declaratory judgments and permanent injunctions against enforcement and operation of certain statutes enacted by the General Assembly of Virginia.

The facts material to the consideration of the questions presented are as follows:

The National Association for the Advancement of Colored People, hereinafter referred to as the NAACP, is a membership corporation organized under the laws of the State of New York. The principal object of the NAACP is to advance the interests of colored people. It is financially supported by contributions from local branches which are issued charters. These branches are grouped into an association called the Virginia State Conference of NAACP Branches, and for all practical purposes, the branches and the State Conference are constituent parts of the NAACP.

Oliver W. Hill and Spottswood W. Robinson, III, Richmond attorneys, are members of the Legal Committee of the NAACP as well as being members of the Legal Committee of the Virginia State Conference. Hill is also chairman of the last-mentioned committee and Virginia Counsel for the NAACP and its Virginia Registered Agent. In addition, Robinson is the Southeast Regional Counsel for the NAACP Legal Defense and Educational Fund, a New York membership corporation, hereinafter referred to as the Legal Defense Fund.

The Activities of the Legal Defense Fund

One of the main purposes of the Legal Defense Fund is to render legal aid gratuitously to such Negroes as may appear to be worthy and who are suffering legal injustice by reason of race and are unable to employ counsel on account of poverty. Thurgood Marshall is Director and Counsel of the Legal Defense Fund and has under his direction a legal research staff of six full-time lawyers who reside in New York City. In addition, the Legal Defense Fund has lawyers in several sections of the country on a retainer basis

and approximately 100 volunteer lawyers throughout the country who come in to assist whenever needed. The Legal Defense Fund also has at its disposal social scientists, teachers of government, anthropologists and sociologists.

The income of the Legal Defense Fund is derived mainly from contributions solicited by letter and telegram from New York City. It is approved by the State of New York to operate as a legal aid society because of the provisions of the barratry statute in effect in New York State.

Costs, expenses and investigations of legal cases on behalf of Negroes are borne by the Legal Defense Fund and it will pay attorneys' fees and bear the costs of a suit by a private litigant to recover damages for violation of civil rights, especially if the principle involved in the particular lawsuit has not been established.

While it was conceded the Legal Defense Fund should represent only those people who cannot afford to pay for litigation, it was stated that no investigations are made to determine the financial conditions of the parties who may request and receive assistance, and the record in this case clearly indicates that many Negroes who are receiving the assistance of the Legal Defense Fund are not in poverty.

The Activities of the NAACP

Speaking of the legal activity of the NAACP, Roy Wilkins, Executive Secretary thereof, testified:

> "Well, under legal activity we have sought to assist in securing the constitutional rights of citizens which may have been impaired or infringed upon or denied. We have offered assistance in the securing of such rights. Where there has been apparently a denial of those rights, we have offered assistance to go to court and establish under the Constitution or under the fed-

eral laws or according to the federal processes, to seek the restoration of those rights to an aggrieved party." (Tr., pp. 70-71)

Wilkins further testified that in assisting plaintiffs "we would either offer them a lawyer to handle their case or to help to handle their case and pay that lawyer ourselves, or we would advise them, if they had their own lawyer, would advise them or assist in the costs of the case" (Tr., p. 82). No money ever passes directly to the plaintiff or litigant.

The NAACP does not ask a person if he wishes to challenge a law. However, it does say publicly that it believes that a certain law is invalid and should be challenged in the courts. Negroes are urged to challenge such laws and if one steps forward, the NAACP agrees to assist. Although it is not in the regular course of business, prepared papers have been submitted at NAACP meetings authorizing someone to act in bringing lawsuits and the people in attendance have been urged to sign.

Robert L. Carter, General Counsel for the NAACP, is paid to handle legal affairs for the corporation. Representation of the various Virginia plaintiffs falls within his duties. The NAACP offers "legal advice and assistance and counsel, and Mr. Carter is one of the commodities" (Tr., p. 125).

Thurgood Marshall was Special Counsel for the NAACP prior to 1957 and it was his job "to advise with lawyers and the people in regard to their legal rights and to render whatever legal assistance could be rendered" (Tr., p. 308).

The State Conference has a legal staff composed of thirteen members and in every instance except two, Negro plaintiffs in civil right cases have been represented by members of such staff in cases in which assistance is given. All prospective plaintiffs are referred to the Chairman of the Legal Staff, Oliver W. Hill, and counsel for such plaintiffs

makes his appearance when Hill has recommended that they have "a legitimate situation that the NAACP should be interested in" (Tr., p. 39).

The State Conference assists in cases involving discrimination and the Executive Board formulates certain policies to be applied in determining whether assistance will be given. Hill then applies these policies and when he decides that the case is a proper one, it is taken "automatically" with the concurrence of the President (Tr., p. 47).

Members of the Legal Staff of the State Conference may attend meetings held by the branches in their capacity as counsel for the Conference and either the particular branch or the State Conference pay the traveling expenses incurred.

Oliver W. Hill testified that he is not compensated as chairman of the Legal Staff. It is his duty to advise Negroes who come to him voluntarily "or directly from some local branch, or after having been directed there by Mr. Banks" whether or not he will recommend to the State Conference that their case will be accepted (Tr., p. 131).

After a case is accepted, Hill selects the lawyer. He refers the case to a member of the Legal Staff residing in the particular area from which the complaining party came. For the Richmond area, "one of us would frequently handle the situation" (Tr., p. 133).*

A bill for the legal services is submitted to Hill who approves it with the concurrence of the President of the State Conference. Hill further stated that no investigation is made as to the ability of the plaintiffs to pay the cost of litigation. He feels that irrespective of wealth, a person has

---

* It should be pointed out that Hill as well as Spottswood W. Robinson, III, also a member of the Legal Staff of the State Conference, both being residents of Richmond, not only represented all the plaintiffs as counsel of record in the Prince Edward, Arlington, Charlottesville, Newport News and Norfolk school segregation cases, but took active and leading parts in the trial of said cases.

the right "to get cooperative action in these cases" (Tr., p. 156).

Economic Reprisals

The appellees, in an attempt to substantiate allegations set forth in their complaints concerning harassment, abuse and economic reprisals against their members and contributors, examined eight witnesses in the court below. It is a fair summary to state that several of these witnesses told only of social reprisals, while the eighth testified that she was a cleaning woman doing day work and that one of her employers dismissed her after her name appeared in the newspaper as being one of the plaintiffs in the Charlottesville school segregation case. However, there was no evidence that she was a member or contributor to the NAACP or the Legal Defense Fund. Furthermore, it was stipulated by counsel that she had been fully employed by white employers since the discharge aforementioned.

The Necessity for Chapters 31 and 35

While a number of Negro plaintiffs in the Prince Edward County school segregation case admitted signing a paper which actually authorized the bringing of that lawsuit, they also testified:

1. They did not know that they were plaintiffs in the case until the year 1957, though it was initially brought in 1951.

2. When they signed the so-called authorization papers they thought only that they would obtain a better or new school for their children.

3. They have never had any communications from the attorneys allegedly representing them concerning the said lawsuit.

Another witness who is a plaintiff in the Charlottesville school segregation case stated that he had had no conversation or written correspondence with the attorneys who brought that suit, all of his contacts being with the NAACP. Still another, who is also a plaintiff in the Charlottesville case testified that he signed an authorization paper at a meeting of the NAACP at which time no lawyers were present.

Another witness on behalf of the appellants testified that the solicitation of personal injury claims is widespread in Virginia, as well as in the rest of the country; that the division of fees is also widespread as well as offering of financial enducements to solicit business; and that running and capping is indulged in by unethical attorneys and laymen in their employ. This witness was an Eastern Representative of the Claims Research Bureau of the Law Department of the American Railroads and stated that the information required by Chapter 31 would help alleviate the conditions described by him.

The Necessity for Chapter 32

Dr. Francis V. Simkins, professor of American History at Longwood College, Farmville, Virginia, testified that he has made a special study of Southern history. As to the history of secret societies, he stated that the Union League, formed in 1862 to promote patriotism in the North, spread to the South where it became an organization of Negroes and carpetbaggers. Its membership list was secret and under that cloak of secrecy its members committed acts of violence.

The Ku Klux Klan was the most important secret society in the South. It was notorious for the crimes it committed. The Klan has had the tendency to reappear periodically and it exists today because of racial tensions. Statutes requiring

the disclosure of membership lists help curb the harmful activities of such organizations.

John Patterson, the Attorney General of Alabama, recounted instances of racial disturbances and violence occurring in the State of Alabama, including the so-called "Montgomery bus boycott situation," instances in Birmingham, the Town of Maplesville, Marion and Tuskegee. General Patterson then pointed out that such a registration law as Chapter 32 "would help the authorities to enforce the law, catch the offenders, and possibly help us identify organizations that are working in certain areas so that we could take preventive measures to prevent the things from happening before they do" (Tr., pp. 570-571).

The Superintendent of the Virginia State Police and four county sheriffs testified that Chapter 32 would be of help in law enforcement. The sheriffs generally stated that an order to integrate the public schools would cause more racial tension, possibly bloodshed, and would raise difficult law enforcement problems. Secret organizations would antagonize the situation and in their opinion, the provisions of Chapter 32 would aid in crime detection, the prevention of violence and would be helpful in selecting additional deputies who may be needed in time of racial disturbances.

Sheriff C. F. Coates, on cross-examination, further testified that a colored man had just complained to him that the NAACP placed pressure on him to join the local Branch. The testimony is as follows:

> "A colored man in my community came to me, on yesterday, and told me that the NAACP had put pressure on him to try to make him join the NAACP. He refused to join. They instructed him that he had to join and he had to vote like they said to vote, and if

there was any bloodshed in that community from integration of the school that the NAACP was going to be in the middle of it. He refused to join it. The head of this organization, so he said, on account of him refusing to join their organization, had sent a bunch of thugs around to his place to tear it up." (Tr., pp. 458-459)

The Motives of the Legislature

Harrison Mann, a member of the House of Delegates from Arlington County, testified that he was the chief patron of Chapters 31, 32 and 35 and was responsible for the drafting of Chapters 32 and 35 prior to the special session of the General Assembly held in 1956.

Mann's reasons that prompted him to strive for the enactment of the statutes in question were:

1. The Autherine Lucy incident in Alabama and the violence ensuing therefrom.

2. John Kasper was beginning his operations in Washington, right across the Potomac River.

3. Existing racial tension in Virginia.

4. The Prince Edward plaintiffs ignorance of the fact that they had brought a lawsuit.

5. The actions of the NAACP in Texas in soliciting and paying litigants.

6. Charges of certain Arlington lawyers that the NAACP was engaged in practicing law.

7. Certain white organizations were commencing suits in Maryland, Kentucky, Louisiana and elsewhere.

8. The organization of the Defenders in Virginia and the recurrence of the Ku Klux Klan in Florida.

V.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The three-judge court below, by judgment entered April 30, 1958, a copy of which is found as Appendix III to this statement, decided questions of such substantial nature as to require plenary consideration by this Court, with briefs on the merits and oral argument, for their resolution for the following reasons:

A.

The Complaints Filed in the Court Below Do Not State Cases or Controversies Within the Meaning of Either Article III, Section 2 of the Constitution of the United States, or Section 2201 of Title 28, U. S. Code.

It must be emphasized that the appellees requested the court below to enjoin the enforcement of criminal statutes of the Commonwealth of Virginia, though there has been no threat of prosecution. A general threat by officials to enforce laws which they are charged to administer is not a sufficient case or controversy over which this Court should exercise its equity jurisdiction. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 88 (1947) and *Watson* v. *Buck*, 313 U. S. 387, 400, 401 (1941).

B.

Under the Circumstances Presented by These Cases the Court Below Should Not Have Restrained the Enforcement of Criminal Statutes of the Commonwealth of Virginia.

In the absence of danger of great, immediate and irrep-

arable injury, a federal court, in the exercise of its equity jurisdiction, will not interfere with a state in the execution of her criminal statutes. *Douglas* v. *Jeannette,* 319 U. S. 157, 163-64 (1943) and *Spielman Motor Sales Co.* v. *Dodge,* 295 U. S. 89, 95 (1935).

In other words, even assuming for sake of argument that there had been a threat of prosecution, the circumstances of these cases did not justify the interference of a court of equity. At worst, the only palpable and legal injury present was the possibility of a fine—a consequence hardly demanding interference of any court of equity. *Spielman Motor Sales Co.* v. *Dodge, supra,* at p. 96. Compare, *Terrace* v. *Thompson,* 263 U. S. 197 (1923), where the plaintiff would have had to risk confiscation of his real property in order to test the validity of a state statute in a criminal prosecution.

To conclude, it is appropriate to quote the following language from *Stefanelli* v. *Minard,* 342 U. S. 117, 120 which dealt with the discretion of federal courts in enjoining state criminal proceedings:

> "* * * Here the considerations governing that discretion touch perhaps the most sensitive source of friction between States and Nations, namely, the active intrusion of the federal courts in the administration of the criminal law for the prosecution of crimes solely within the power of the States."

C.

The Court Below Should Not Have Enjoined the Enforcement of State Statutes Which Have Not Been Authoritatively Construed by the State Courts.

The doctrine of equitable abstention is involved here and it is only necessary to examine the majority and minority

opinions of the court below to conclude that a substantial question is raised by this appeal.

Without analysis, the majority cited five decisions of this Court and relied strongly upon a dissenting opinion of the late Chief Judge Parker in *Bryan* v. *Austin*, 148 F. Supp. 563 (D. C. E. D. S. C., 1957) in holding:

> "The policy laid down by the Supreme Court does not require a stay of proceedings in the federal courts in cases of this sort if the state statutes at issue are free of doubt or ambiguity. * * *" (159 F. Supp. 503, 533)

Notwithstanding its conclusion, the majority opinion seemed to recognize that recent decisions of this Court raised doubts as to the proper application of the doctrine of equitable abstention. It was stated at p. 523:

> "Neither are we given any clear formula to follow under the decisions of the Supreme Court. The more recent decisions of the highest court suggest that statutory three-judge courts should be hesitant in exercising jurisdiction in the absence of state court action, or at least a reasonable opportunity to secure same. * * *"

Nothing can be added to the exhaustive dissenting opinion of the court below. The decisions relied upon by the majority were analysed and found not to be controlling. Further, the dissenting opinion points to and examines many decisions of this Court, including the recent case of *Government & C. E. O. C., CIO* v. *Windsor*, 353 U. S. 364 (1957), and finds:

> "The majority adopts that portion of the dissenting opinion in Bryan v. Austin, and proclaims as a policy of judicial interpretation that a stay of proceedings in

the Federal Courts is not required in cases in which the state statutes at issue are free of doubt or ambiguity. It is respectfully submitted that the pronouncement of such a doctrine is not warranted by the authorities cited. It is true that in some few cases the Supreme Court has not required such prior interpretation but this fact falls far short of establishing a rule of procedure under which proceedings in a Federal Court in a case such as this should be stayed *only* where the statute involved is so ill-defined that its constitutionality is doubtful until it is construed judicially. (159 F. Supp. 503, 543)

* * *

"* * * The majority have elected to base their decision upon authority for which the most that can be said is that it is of a negative character and upon a 'prophecy of foreshadowing "trends".' This method of judicial interpretation based upon prophecy was commented upon and rejected by the Supreme Court in Spector." (at p. 548)

The factual background, as well as the language of this Court in the *Windsor* case, *supra*, clearly indicates that the question presented merits the full consideration of the Court. There, the plaintiff sought an injunction restraining the enforcement of a state statute restricting the rights of certain public employees of a state to join or participate in labor organizations. The statutory three-judge court held that the doctrine of equitable abstention applied since the state courts had not rendered a definitive construction of the statute. 116 F. Supp. 354 (N. D. Ala., 1953) affm'd. without opinion, 347 U. S. 901 (1954). The plaintiff then applied to a state court for relief, contending only that the union was not subject to the terms of the statute. Constitutional questions were not raised. The Supreme Court of Alabama affirmed the decision of the lower court, agreeing that the union was subject to the terms of the statute, and the plaintiff returned to the federal forum where it was held:

"* * * it is clear to us that the Alabama courts have not construed the Solomon Bill in such a manner as to render it unconstitutional, and, of course, we cannot assume that the State courts will ever so construe said statute. * * *" (146 F. Supp. 214, 216 (1956))

This Court vacated the judgment of the district court and said:

"* * * The bare adjudication by the Alabama Supreme Court that the union is subject to this Act does not suffice, since that court was not asked to interpret the statute in light of the constitutional objections presented to the District Court. If appellants' freedom-of-expression and equal-protection arguments had been presented to the state court, it might have construed the statute in a different manner. * * *" (353 U. S., *supra*, at p. 366)

The Alabama statute before the Court in the *Windsor* case, *supra*, is set forth in full as Appendix IV to this statement. When this statute is considered and compared with Chapters 31, 32 and 35 of the Acts of the General Assembly of Virginia, Extra Session, 1956, it is plain that the majority below erred in refusing to apply the doctrine of abstention. The Virginia statutes are not "free of doubt or ambiguity," as the majority implies, under the decision of the *Windsor* case.*

As suggested in the dissenting opinion, an issue of vital importance is involved, namely, the proper balance between

*Compare also the North Carolina statute, set forth as Appendix V to this statement, which was under consideration in *Lassiter* v. *Taylor*, 152 F. Supp. 295 (E. D. N. C., 1957). There, the doctrine of equitable abstention was applied under the authority of the *Windsor* case. It is interesting to note that the late Chief Judge Parker, who wrote the dissent in *Bryan* v. *Austin*, *supra*, was a member of the three-judge court.

state and federal courts. Under such circumstances, this Court should review the decision of the court below and clarify the doctrine of equitable abstention and its application by the lower federal courts.

D.

The Constitutionality of Chapters 31, 32 and 35, Acts of the General Assembly of Virginia, Extra Session, 1956

Chapters 31 and 32 require the registration of certain persons, firms, associations and corporations with the State Corporation Commission, while Chapter 35 relates to the improper practice of law by defining the crime of barratry.

Chapter 31 applies to those engaged in the solicitation of funds for the purpose of financing or maintaining litigation to which they are not parties or in which they have no pecuniary rights or liabilities. Chapter 32 applies not only to those engaged in the activities described in Chapter 31, but is also directed to advocates of racial integration or segregation and is designed to relieve interracial tension and to prevent the violation of the anti-lynching laws of the state. It also requires registration before promoting or opposing the passage of legislation on behalf of any race.

The majority of the court below held that Chapters 31 and 32 violated freedom of speech, and relied strongly on *United States* v. *Harriss*, 347 U. S. 612 (1954). In so doing, it was made abundantly clear that the doctrine of equitable abstention should have been applied, even when accepting as correct the principles stated by the majority on this point. For example, Clause (1) of Section 2 of Chapter 32, concerning the promoting or opposing the passage of legislation, was construed in such a broad manner as to be considered in conflict with the *Harriss* case, *supra*. It, of course, cannot be assumed that a state court would construe the clause in

question in the same manner if the constitutional issues raised in the court below were presented in such forum. *Government & C. E. O., C., C. I. O.* v. *Windsor, supra.*

It should also be pointed out that the majority of the court below held that the terms of Clause (3) of Section 2 of Chapter 32 are too vague and indefinite to satisfy constitutional requirements. Again, may it be said that the state courts would not limit the terms of Clause (3) so as to satisfy constitutional requirements?

Statutes requiring registration of persons and organizations, who engage in certain activities, or of members of certain organizations are not new to the jurisprudence of the United States. Statutes requiring certain persons or organizations to list their sources of income and their expenditures with particularity are no rarity. Such statutes are found in the United States Code as well as upon the statute books of the States. The statutes have been contested in court and have been upheld. Further, regulation of persons who solicit funds from the public, by requiring a reasonable identification and accounting therefor, has not been considered an imposition upon such solicitors.

The federal lobbying act, 2 U. S. C. Section 261 *et seq.*, was upheld by this Court in the *Harriss* case, *supra*, and no doubts as to the constitutionality of the statute requiring the registration of foreign propagandists or agents of foreign principals has been expressed. *Viereck* v. *United States*, 318 U. S. 236 (1943).

50 U. S. C. Section 786 *et seq.* requires registration and annual reports of certain Communist organizations. The registration provisions of this statute were upheld in *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (D. C., 1954), reversed on procedural grounds in 351 U. S. 115 (1956).

The *Federal Corrupt Practices Act*, 2 U. S. C. Section 241, *et seq.*, provides that the treasurer of a political committee shall file a statement with the name and address of each person contributing $100.00 in a calendar year and the name and address of each person to whom an expenditure of over $100.00 is made. The statute was upheld in *Burroughs* v. *United States*, 290 U. S. 534 (1934).

Another registration act was that contained in the *Internal Revenue Code of 1939*, 26 U. S. C. Section 1132 *et seq.*, which required registration by "every person possessing a firearm" with the local district collector. The information required was the number or other identification of the firearm, the name and address of the possessor, the place where the firearm is normally kept, and the place of business or employment of the possessor. The registration provisions of this statute were upheld in *Sonzinsky* v. *United States*, 300 U. S. 506 (1937).

In the case of *Lewis Publishing Company* v. *Morgan*, 229 U. S. 288 (1913), the Federal statute requiring users of the mails for newspapers or other publications to furnish each year a sworn statement of the names and post office addresses of the editor, the publisher, the business manager and the owners or stockholders, if the publication was a corporation, and the bondholder, mortgagees and other security holders was upheld.

In the case of *Electric Bond & S. Co.* v. *S. E. C.*, 303 U. S. 419 (1938), the Public Utility Holding Company Act of 1935, prohibiting use of the mails upon the failure to file a registration statement containing certain required information, was upheld.

Mention of registration statutes above, which have been upheld by this Court, clearly indicates that a substantial question is involved in this appeal.

Appellants urge that the principles enunciated in *Thomas* v. *Collins*, 323 U. S. 516 (1945), have been ignored by the court below. Further, the majority has improperly construed *People of State of New York ex rel. Bryant* v. *Zimmerman*, 278 U. S. 63 (1928). The majority apparently distinguishes the *Zimmerman* case on two grounds. First, it is implied that the Ku Klux Klan is an evil organization, while the appellee organizations are exceptionally fine organizations which have never caused, and will not cause in the future, such tension or strife as to warrant the exercise of the police power of a state. The second ground upon which the majority places great reliance is legislative purpose. Since it was the purpose of the Legislature, according to the majority, to destroy the appellees, Chapters 31 and 32 cannot be upheld. On this point, the court below has violated all rules of statutory construction, since it has been stated that the registration statutes are free from doubt and ambiguity. Yet, the motives and intentions of the General Assembly of Virginia are used to strike down such legislation.

As pointed out, Chapter 35 creates the statutory offense of barratry. It conforms to the common law crime with two exceptions, namely, the barrator must be shown to have participated in payment of the expenses of the litigation, but need not be shown to have stirred up litigation on more than one occasion. The dissenting opinion states that the "statutory definition of 'instigating' is somewhat ambiguous and will require a judicial interpretation." 159 F. Supp. at p. 549. The appellants agree, and once again it is shown that the majority of the court below should have applied the doctrine of equitable abstention. May it be said with finality that a state court would find that the activities of the appellees amounted to "stirring up litigation" within the meaning

f Chapter 35 if the federal constitutional questions raised n the court below were properly presented to it?

The majority of the court below concluded that Chapter 5 violated the rights of the appellees guaranteed by the qual protection clause as well as the due process clause of he Fourteenth Amendment. No authority is cited for the onclusion that an arbitrary classification is established by irtue of the exemption of legal aid societies serving all eedy persons in all types of litigation and the appellees ailed to show that anyone comparably situated has been reated differently from them. *National Union of Marine Cooks* v. *Arnold*, 348 U. S. 37 (1954).

Moreover, the majority concluded that Chapter 35 vioated the due process clause since it was designed to put the ppellees out of business. The fact that an individual, ssociation, or corporation may be put out of business by particular statute is no reason for its invalidity. *Re Isserman*, 345 U. S. 286 (1953).

In concluding, it is to be noted that the majority of the court below failed to follow the decision in *McCloskey* v. *Tobin*, 252 U. S. 107 (1920), wherein a Texas statute, defining with much detail the offense of barratry, was upheld by this Court.

Respectfully submitted,

TUCKER, MAYS, MOORE & REED
1407 State-Planters Bank Bldg.
Richmond 19, Virginia
Of Counsel

DAVID J. MAYS
HENRY T. WICKHAM
1407 State-Planters Bank Bldg.
Richmond 19, Virginia

J. SEGAR GRAVATT
Blackstone, Virginia
Counsel for the Appellants

Dated June 23, 1958

CERTIFICATE OF SERVICE

I hereby certify that copies of the aforegoing statement of jurisdiction have been served by depositing the same in a United States mail box, with first class postage prepaid, to the following counsel of record:

Robert L. Carter
20 West 40th Street
New York 18, New York

Thurgood Marshall
10 Columbus Circle
New York 19, New York

Spottswood W. Robinson, III
623 North Third Street
Richmond, Virginia

Oliver W. Hill
118 East Leigh Street
Richmond, Virginia

on this ..... day of June, 1958.

.....

HENRY T. WICKHAM